

April 15, 2013

Marilyn Tavenner  
Acting Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Acting Administrator Tavenner:

We are writing on behalf of four patient advocacy organizations – the American Kidney Fund, Dialysis Patient Citizens, National Kidney Foundation, and Renal Support Network – to urge the Centers for Medicare and Medicaid Services (CMS) to ensure that the payment adjustment to the Medicare End-Stage Renal Disease (ESRD) bundled payment system required by the American Taxpayer Relief Act of 2012 (P.L. 112-240) (ATRA) does not destabilize the ESRD bundled payment system and jeopardize access to life-saving dialysis treatments for individuals with ESRD.

Generally speaking, the implementation of the ESRD prospective payment system (PPS) and Quality Incentive Program (QIP) has been remarkably smooth. It is a positive example of how the Agency can work with interested parties to reform a Medicare payment program effectively. CMS's own data shows that patient outcomes have improved or remained high in most cases throughout this transition. We believe it is important that care be taken to ensure that the system is not harmed.

While we appreciate that the Secretary must implement the provision of the ATRA, such implementation should not undermine the stability of the current system, which would threaten access to this life-sustaining care for beneficiaries. As your team considers how to comply with the new provision, they should take into account the other provisions of the ESRD statute. Specifically, CMS has an obligation to make sure that payment amounts are related to the cost of providing care or other economic and equitable factors. Thus, while it is clear that the Congress has instructed the Agency to implement a reduction in the payment amount to reflect changes in the utilization of certain drugs, it did not change this underlying statutory obligation. The final payment amount should still cover the actual cost of providing services to beneficiaries.

Any payment change has real and practical consequences for Medicare beneficiaries. People on dialysis are concerned that the payment adjustment could result in changes to care. For example, if the payment amount does not cover the cost of providing care, facilities may be forced to reduce the number of staff or their hours. This may affect patient access to social workers, nurses, and dietitians that beneficiaries rely on for care. Patients may also find that they have less flexibility as to when they can receive dialysis treatments, if facilities do not have resources to maintain staffing levels. Access to nocturnal in-center dialysis, for example, may be limited. Medicare beneficiaries also are concerned that facilities could close, requiring longer drive times to receive care. For patients, this may mean less time to work or to care for their families, reducing how they view their quality of life.

It is also important to maintain the stability of the current payment system so that it allows for more flexibility in how treatment is provided. One goal of the PPS for the ESRD program was to create such flexibility and shift away from the rigid composite rate and separately billed item model of the past. Without flexibility and payment stability, it will be impossible to develop innovative ways to improve the delivery of care.

Ms. Marilyn Tavenner

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Therefore, we strongly urge you to undertake the implementation of the ATRA provision cautiously and not undermine the bundled payment system by cutting the payment rate to an amount that is below the cost of providing care.

Thank you for your consideration of these patient concerns. We would welcome the opportunity to answer any questions or provide you with additional information. Please do not hesitate to contact Kathy Lester at (202) 457-6562 or [klester@pattonboggs.com](mailto:klester@pattonboggs.com) to help coordinate our follow-up.

Sincerely,



LaVarne A. Burton  
President and CEO  
American Kidney Fund

***Dolph Chianchiano***

Dolph Chianchiano  
Health Policy Advisor  
National Kidney Foundation



Hrant Jamgochian, J.D., LL.M.  
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Lori Hartwell  
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